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# [***Gov't Emples. Ins. Co. v. Leif's Auto Collision Ctrs., LLC***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5S5W-12R1-JT42-S36B-00000-00&context=)

United States District Court for the District of Oregon, Portland Division

March 2, 2018, Decided; March 2, 2018, Filed

No. 3:17-cv-045-PK

**Reporter**

2018 U.S. Dist. LEXIS 68699 \*

GOVERNMENT EMPLOYEES INSURANCE CO., Plaintiff, v. LEIF'S AUTO COLLISION CENTERS, LLC, and LEIF HANSEN, Defendants.

**Subsequent History:** Adopted by, Summary judgment granted by, in part, Motion granted by [*Gov't Emples. Ins. Co. v. Leif's Auto Collision Ctrs., LLC, 2018 U.S. Dist. LEXIS 67617 (D. Or., Apr. 23, 2018)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5S5J-B571-JSC5-M02P-00000-00&context=)

**Prior History:** [*Gov't Emples. Ins. Co. v. Leif's Auto Collision Ctrs., LLC, 2018 U.S. Dist. LEXIS 31135 (D. Or., Feb. 27, 2018)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RRV-3N41-F016-S3YG-00000-00&context=)

**Core Terms**

adjusters, insured, pleadings, repairs, Recommendation, employees, alleges, amend, anti-steering, exemption, workplace safety, declaratory, shop, summary judgment, federal statute, partial judgment, motor vehicle

**Counsel:** **[\*1]**For Government Employees Insurance Company, a Maryland insurance company, Plaintiff: Dan W. Goldfine, Kirstin A. Story, Roy Herrera, LEAD ATTORNEYS, PRO HAC VICE, Lewis Roca Rothgerber Christie LLP, Phoenix, AZ; Joshua Grabel, LEAD ATTORNEY, PRO HAC VICE, Lewis Roca Rothgerber Christie, Phoenix, AZ; Scott A. Brooksby, LEAD ATTORNEY, Kristin L. Olson, Olson Brooksby PC, Portland, OR.

For Leif's Auto Collision Centers, LLC, an Oregon limited liability company, doing business as Leif's Auto Collision Centers, Leif Hansen, an individual, Defendants: Blerina Kotori, Stephanie J. Grant, Steven D. Olson, LEAD ATTORNEYS, Jon P. Stride, Tonkon Torp LLP, Portland, OR.

**Judges:** Honorable Paul Papak, United States Magistrate Judge.

**Opinion by:** Paul Papak

**Opinion**

**FINDINGS AND RECOMMENDATION**

**PAPAK, J**.

Plaintiff Government Employees Insurance Co. brings this action against Defendants Leif's Auto Collision Centers, LLC, and Leif Hansen, asserting claims for intentional interference with contractual relations, defamation, and declaratory relief. Plaintiff alleges that Defendants have attempted to intimidate, delay, and obstruct Plaintiff's insurance adjusters from evaluating damaged vehicles on Defendants' premises.

Plaintiff has filed**[\*2]** a Motion for Leave to Amend Complaint, and Defendants have filed a Motion for Partial Judgment on the Pleadings or Partial Summary Judgment. For the following reasons, I recommend granting Defendants' motion and Plaintiff's motion.

**DISCUSSION**

**I. Defendants' Motion for Partial Judgment on the Pleadings or Partial Summary Judgment**

Defendants move for partial judgment on the pleadings or for partial summary judgment on Plaintiff's claim seeking a declaratory judgment that Plaintiff "need no longer conduct commercial activity with Defendants, notwithstanding Oregon law to the contrary." Compl. ¶ 54; Proposed First Am. Compl. ¶ 92. The "Oregon law to the contrary" is the anti-steering statute, [*Or. Rev. Stat. § 746.280*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-DMF1-648C-84W0-00000-00&context=), which prohibits insurers from requiring "that a particular person make the repairs to the insured's motor vehicle as a condition for recovery by the insured under a motor vehicle liability insurance policy." Plaintiff contends that because of Defendants' alleged harassment of its adjusters, "a complete cessation of commercial activity with Defendants is reasonably necessary to protect the life, safety, and/or health of [Plaintiff's] adjusters." Compl. ¶ 51; Proposed First Am. Compl. ¶ 89.

**A. Background [\*3]**

Plaintiff alleges that Defendants have intentionally created an atmosphere of fear and intimidation to prevent adjusters from adequately performing their work. Compl. ¶ 15; Proposed First Am. Compl. ¶ 26. Plaintiff alleges that Defendant Hansen and employees of Defendant Leif's (1) told Plaintiff's adjusters that "they know how to find people," with the intent to intimidate the adjusters, Compl. ¶ 15, Proposed First Am. Compl. ¶ 26; (2) threatened to sue Plaintiff's adjusters personally or have them arrested, typically when adjusters were attempting to negotiate estimates or suggested a disagreement with Defendants about an estimate, especially if this occurred when a customer of Plaintiff's was present, Compl. ¶ 16, Proposed First Am. Compl. ¶ 27; (3) carry knives and talk about guns in the presence of Plaintiff's adjusters at Defendants' facility, and at least one of Defendants' employees talked about "killing people" with the intent to frighten Plaintiff's adjuster, Compl. ¶ 17; Proposed First Am. Compl. ¶ 28; and (4) one of Defendants' employees drove a vehicle toward an adjuster for Plaintiff, stopping at the last moment with the intent to harm or frighten the adjuster, Compl.**[\*4]** ¶ 18, Proposed First Am. Compl. ¶ 29. Plaintiff alleges that because of Defendants' attempts to intimidate its adjusters, one adjuster has refused to return to Defendants' premises, and several other adjusters "have experienced significant stress and emotional harm." Compl. ¶ 19, Proposed First Am. Compl. ¶ 30. Plaintiff alleges that in response to Defendants' conduct towards its adjusters, Plaintiff has "removed its adjusters from [Defendants' premises] and contracted with independent outside adjusters," causing Plaintiff to incur additional expenses for repairs performed by Defendants. Proposed First Am. Compl. ¶ 31 (not in the original complaint).

Plaintiff also alleges that Defendants have permanently barred several of Plaintiff's adjusters from performing adjusting services, without any reasonable basis. Compl. ¶ 29, Proposed First Am. Compl. ¶ 41. Defendants allegedly routinely and unreasonably refuse to negotiate estimates on the cost of repairs, and have thrown out adjusters when they attempt to negotiate. Compl. ¶ 31, Proposed First Am. Compl. ¶ 43. In the proposed first amended complaint, Plaintiff adds an assertion that Defendants' conduct violates not only the Oregon statute**[\*5]** on workplace safety, [*Or. Rev. Stat. § 654.010*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-DB91-648C-84PS-00000-00&context=), but also the analogous federal statute on workplace safety, [*29 U.S.C.§ 654*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTJ1-NRF4-432Y-00000-00&context=). *See* Proposed First Am. **Compl**. ¶ 88.

**B. Legal Standards**

**1. Motions for Judgment on the Pleadings**

A motion for judgment on the pleadings under [*Federal Rule of Civil Procedure 12(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) '"is properly granted when, taking all the allegations in the non-moving party's pleadings as true, the moving party is entitled to judgment as a matter of law.'" [*United States v. Teng Jiao Zhou, 815 F.3d 639, 642 (9th Cir. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5J7V-PSR1-F04K-V39D-00000-00&context=) (quoting [*Fajardo v. Cty. of Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WMC-2720-0038-X4S6-00000-00&context=). Like a motion to dismiss for failure to state a claim under [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), a motion for judgment on the pleadings challenges the legal sufficiency of the opposing party's pleadings. *Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989)*.

**2. Motions for Summary Judgment**

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." [*Fed. R. Civ. P. 56(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F165-00000-00&context=). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." [*Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6H80-0039-N37M-00000-00&context=). In ruling on a motion for summary judgment, the court must draw all reasonable inferences in favor of the nonmoving party and may not credibility determinations or weigh evidence. *See* [*Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40G9-3090-004B-Y03B-00000-00&context=).

**C. Discussion**

Under the *Declaratory Judgment Act*, "In a case of actual controversy within its jurisdiction ... any court**[\*6]** of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration," *28 U.S.C. § 2201(a)*.[[1]](#footnote-0)1 This court has discretion in deciding whether to grant declaratory relief. [*Principal Life Ins. Co. v. Robinson, 394 F.3d 665, 669 (9th Cir. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4F68-CVR0-0038-X35H-00000-00&context=).

Defendants argue that, accepting Plaintiff's allegations as true, Plaintiff has not shown a legal basis for allowing Plaintiff an exemption from the anti-steering statute. Defendants note that the anti-steering statute contains no express exemptions:

(1) An insurer may not require that a particular person make the repairs to the insured's motor vehicle as a condition for recovery by the insured under a motor vehicle liability insurance policy,

(2) Prior to providing a recommendation that a particular person make repairs to the insured's motor vehicle, the person adjusting the claim on behalf of the insurer shall inform the insured of the rights conferred by [*subsection (1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-DMF1-648C-84W0-00000-00&context=) of this section by communicating in a statement substantially similar to the following:

OREGON LAW PROHIBITS US FROM REQUIRING YOU TO GET REPAIRS TO YOUR VEHICLE AT A PARTICULAR MOTOR VEHICLE REPAIR SHOP. YOU HAVE THE RIGHT TO SELECT THE MOTOR VEHICLE REPAIR SHOP OF YOUR CHOICE.

(3) If an insured elects to have the**[\*7]** motor vehicle repaired at a motor vehicle repair shop other than a shop recommended by the insurer, the insurer may not limit the cost of repairs necessary to return the motor vehicle to a preloss condition relative to safety, function and appearance other than as stated in the policy or as otherwise allowed by law,

[*Or. Rev. Stat, § 746.280*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-DMF1-648C-84W0-00000-00&context=).

The Oregon workplace safety statute provides:

Every employer shall furnish employment and a place of employment which are safe and healthful for employees therein, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees.

[*Or. Rev. Stat. § 654.010*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-DB91-648C-84PS-00000-00&context=). The Oregon statute is based on the federal workplace safety statute, [*29 U.S.C. § 654(a)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTJ1-NRF4-432Y-00000-00&context=). [*Oregon Occupational Safety & Health Div. v. Port of Portland, 141 Ore. App. 467, 476, 918 P.2d 448, 452 (1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-XRV0-003F-Y093-00000-00&context=). The federal statute provides that an employer

shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

[*29 U.S.C. §654(a)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTJ1-NRF4-432Y-00000-00&context=).

Because the anti-steering statute contains no express**[\*8]** exemptions, the issue is whether this court may create an implied exemption for Plaintiff based on the asserted conflict between the anti-steering statute and the workplace safety statutes. The parties did not cite decisions on point, and I did not find any.[[2]](#footnote-1)2

I conclude that the anti-steering statute and the workplace safety statutes are not irreconcilably in conflict because Plaintiff has alternative remedies available that would not require creating an exemption from the anti-steering statute. As Defendants suggest, rather than seeking an exemption, Plaintiff instead may report Defendants' alleged unsafe workplace to the Oregon Department of Commerce and Business Services, which is charged with enforcing workplace safety laws through citations or fines. Defs.' Reply 4. Alternatively, Plaintiff may seek an injunction against Defendants, which would subject Defendants to sanctions for contempt of court if they violated the injunction. I agree with Defendants that Plaintiff has adequate remedies for protecting its employees, rather than the statutory exemption Plaintiff seeks.

Plaintiff responds that it should be allowed to complete discovery before this court determines whether Plaintiff**[\*9]** is entitled to an exemption. I agree with Defendants, however, based on the allegations in Plaintiff's pleadings, that Plaintiff's claim for declaratory relief presents an issue of law that this court may resolve through a motion for judgment on the pleadings.

Plaintiff also argues that when the Oregon Legislature drafted and enacted the anti-steering statute, the Legislature could not have foreseen that a body shop would attempt to obstruct an insurer's adjusters through threats and harassment. Defendants respond that the Legislature was aware of the potential conflicts between insurers and body shops. Assuming the Legislature did not foresee the type of alleged conflict at issue here, that failure does not justify creating an ad hoc exemption to the statute.

I recommend granting Defendants' Motion for Partial Judgment on the Pleadings because Plaintiff has not shown a conflict between the anti-steering statute and the workplace safety statutes sufficient to justify the declaratory relief Plaintiff seeks. If Plaintiff establishes at trial that Defendants' employees have been harassing Plaintiff's adjusters in an attempt to obstruct their work, then injunctive relief prohibiting such**[\*10]** conduct may be an appropriate remedy.

**II. Plaintiff's Motion for Leave to Amend**

**A. Background**

Plaintiff seeks to add claims for conversion, trespass to chattels, unfair trade practices, and unjust enrichment, and to add three related businesses as plaintiffs: GEICO General Insurance Co., GEICO Casualty Co., and GEICO Indemnity Co. Plaintiff bases the proposed additional claims on allegations that Defendants have charged for unnecessary or unauthorized work, inflated repair costs, wrongfully withheld money due Plaintiff, and withheld vehicles after Plaintiff demanded the vehicles' return.

Plaintiff asserts that Defendants' conduct worsened after the initial complaint was filed in January 2017. Plaintiff notes that Defendants have filed two action against Plaintiff since this action was filed: *Leif's Auto Collision Centers, LLC v. GEICO*, No. 3:17-cv-1822-HZ (asserting ***antitrust*** claims against Plaintiff based on an alleged conspiracy with other body shops to boycott Leif's), and *Hansen v. GEICO*, No. 3:17-cv-1986-MO (Leif Hansen claims Plaintiff failed to pay him for electronic scans of his personal truck when the truck sustained damage to its rear bumper).

**B. Legal Standards for Motions for [\*11]  Leave to Amend Complaint**

The court "should grant leave to amend ... unless it determines that the pleading could not possibly be cured by the allegation of other facts." [*Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir.2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YJ3-P760-0038-X0KS-00000-00&context=) (en banc) (internal quotation marks and citations omitted). The court may, however, deny leave to amend if no amendment could cure the complaint's defects. [*Eminence Capital, LLC v. Aspeon, Inc. ,316 F.3d 1048, 1052 (9th Cir.2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:47RK-6JB0-0038-X55S-00000-00&context=) (per curiam). In deciding whether to grant a motion to amend, courts may consider: (1) bad faith; (2) undue delay; (3) prejudice to the opponent; (4) futility of the amendment; and (5) existence of previous amendments, if any. [*Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-32H0-003B-52S2-00000-00&context=). Although no single factor is dispositive, prejudice to the opposing party is the most important factor, [*Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387 (9th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5KJ0-003B-50X3-00000-00&context=).

**C. Discussion**

Defendants assert that Plaintiff unduly delayed seeking to amend the complaint, and that allowing Plaintiff's motion will unfairly prejudice them. As to prejudice, Defendants contend that the proposed additional claims will result in more than 50 mini-trials to address each alleged incident supporting Plaintiff's new claims. Defendants also argue that the new claims will require additional discovery.

I recommend granting Plaintiff's motion to amend. Plaintiff did not unduly delay seeking to file the amended complaint, filing**[\*12]** it while discovery is ongoing and before the parties have taken depositions. Nor are Defendants unfairly prejudiced by combining the proposed additional claims with Plaintiff's original claims. The proposed new claims relate to claims in the original complaint about Defendants' improper business practices. Denying the motion to amend would cause Plaintiff to file another action against Defendants, which would not promote judicial efficiency or economy.

**CONCLUSION**

For the reasons provided above, Defendants' Motion for Partial Judgment on the Pleadings, ECF No. 37, should be GRANTED. Plaintiff's Motion for Leave to File an Amended Complaint, ECF No. 40, should be GRANTED. Plaintiff's Amended Complaint should be filed within 30 days of the final ruling on this Findings and Recommendation.

**SCHEDULING ORDER**

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due fourteen (14) days from service of the Findings and Recommendation. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due fourteen (14) days after being served with a copy of the objections. When**[\*13]** the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

Dated this 2nd day of March, 2018.

/s/ Paul Papak

Honorable Paul Papak

United States Magistrate Judge

**End of Document**

1. 1Plaintiff also cites the [*Oregon Declaratory Judgment Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-C8K1-648C-80D9-00000-00&context=), [*Or. Rev. Stat. § 28.010*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-C8K1-648C-80D9-00000-00&context=). Pl.'s Resp. 9, ECF No, 44. Courts have held that the federal statute is procedural and therefore applies in diversity actions. *See, e.g.,* [*In re Adobe Sys., Inc. Privacy Litig., 66 F. Supp. 3d 1197, 1219 (N.D. Cal. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D2P-H391-F04C-T4SD-00000-00&context=). However, because the Oregon statute is similar to the federal statute, there is little practical effect in applying only the federal statute. *See id.* (California statute "broadly equivalent" to federal statute). [↑](#footnote-ref-0)
2. 2Defendants cite [*McLain v. Lafferty, 257 Ore. 553, 480 P.2d 430 (1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-XHC0-003F-Y1M8-00000-00&context=), which concerned a conflict between a statute prohibiting vehicles from stopping on a highway and a state ***regulation*** requiring that school bus drivers stop for children exiting a school bus and crossing a highway. I do not find the decision instructive on the issue here. [↑](#footnote-ref-1)